WA 10/2004
BEFORE
THE HON'BLE MR JUSTICE AMITAVA ROY
THE HON'BLE MR. JUSTICE MUTUM BK SINGH
JUDGMENT AND ORDER
AMITAVA ROY , J
Feeling aggrieved by the judgment and order dated 27.06.2003, passed in C.R. No. 3292/1994, dismissing the challenge to the termination of his services as a disciplinary measure, the appellant is in appeal.

2. We have heard Mr. DC Mahanta, Senior Advocate for the appellant and Mr. N Singha, learned standing counsel, Assam State Electricity Board (hereinafter also referred to as the 'Board').

3. The pleaded case of the petitioner in brief, is that while he was posted as Assistant Engineer at KANCH Electrical Circle, vide letter dated 16.06.1992, the Addl. Chief Engineer (Com), ASEB, Guwahati, instructed the Superintending Engineer (E), KANCH Electrical Circle to take necessary steps for early realization of an outstanding amount of Rs. 1.5 crores from the Board's consumer M/s. Vinay Cements Ltd. As the said letter did not reach the Superintending Engineer KANCH Electrical Circle, the said authority entrusted the appellant/writ petitioner with the duty to collect a copy thereof, from the office of the Addl. Chief Engineer (Com) ASEB, Guwahati, as he was scheduled to visit the city in connection with other official duties.

4. According to the appellant/writ petitioner, after arriving at Guwahati on 27.09.1992 at about 3.45 P.M, he visited the Superintending Engineer in the office of the Addl. Chief Engineer (Com), whereafter, he was directed to approach the Executive Engineer of the same office. The executive Engineer of the office of the Addl. Chief Engineer (Com) Guwahati, asked the appellant/writ petitioner to copy the contents of the letter dated 16.06.1992 available in the records, on being dictated by him (Executive Engineer). It has been pleaded that the Executive Engineer after dictating the letter in a hurry insisted upon the appellant/writ petitioner to acknowledge the receipt of the letter which in good faith he did. In due course, the petitioner handed over the copy of the said letter to the Superintending Engineer KANCH Electrical Circle. Long thereafter, in the month of May 1993, he was placed under suspension and was thereafter, served with a confidential letter dated 15.05.1993, charging him with fraud and dishonesty in connection with the business of the Board with the intention to cause wrongful gain to M/s. Vinay Cements Ltd. Thereby, the appellant/writ petitioner was asked to show cause under Regulation 10 of the ASEB (General Service) Regulations, 1960 (hereinafter also referred to as the 'Regulations'), as to why he should not be penalized for the above misconduct. The memorandum of charge was accompanied by statement of allegations and lists of documents and witnesses.

5. The appellant/writ petitioner submitted his written reply denying the allegations. It would be appropriate to extract the relevant portions thereof, for ready reference: -

The applicant after finishing his official duties went to Bijuli Bhawan, Paltan bazar, Guwahati on 27.07.1992, and met with the Superintending Engineer (Com), regarding the letter dated 16.06.1992 as asked by the Superintending Engineer, KANCH Electrical Circle. And the Superintending Engineer (Com) advised to meet with Mr. Chandi Medhi and handed over the letter given by the Superintending Engineer, KANCH to the Additional Chief Engineer (Com), ASEB Paltan Bazar for supplying a copy of the letter dated 16.06.1992 and forwarded the above letter to Sri Chandi Medhi and accordingly I went to his table as directed by the Superintending Engineer (Com). Thereafter, Sri Chandi Medhi on 27.07.1992 allowed the applicant/myself to copy the letter dated 16.06.1992 and accordingly the applicant copied the above letter on 27.07.1992 with his remark copied in toto' and signed on the body of the letter dated 16.06.1992 on 27.07.1992.

Further I beg to state that, the S.E. (Com), directed Sri Chandi Medhi, Executive Engineer to supply a copy of letter dated 16.06.1992. But Sri Chandi Medhi did not supply the same and asked me to copy the same from the file and under the compelling circumstances I copied the same. And the same copy has been submitted in the office of the Superintending Engineer, KANCH, Diphu on 29.07.1992.

6. In the disciplinary proceeding that followed, the appellant-petitioner participated therein. The disciplinary authority examined witnesses and introduced documents in support of the charge. The appellant also offered a statement of defence in which he inter alia, admitted to have copied the typed letter in his own handwriting ad verbatum asserting that the copy made by him of the letter dated 16.06.1992, was a replica thereof, as produced by the Executive Engineer C.R. Medhi.

7. The inquiry officer found the charge to be proved. On a consideration of the materials on record, a copy thereof, was forwarded to the appellant-petitioner along with the record of evidence and by the show cause notice dated 11.07.1994. He was asked to rerepresent against the proposed penalty of dismissal from Board's service. Though, he did so, the disciplinary authority by the order dated 10.08.1994 terminated his services.

8. The Board in its counter has averred that the appellant-writ petitioner was directed to attend the office of the Addl. Chief Engineer (Com) Guwahati on 27.07.1992, for collecting the copy of the letter dated 16.06.1992, which was supplied to him by the Executive Engineer, Shri C.R. Medhi. However, he, after returning to his office delivered a handwritten copy of the said letter to the Superintending Engineer KANCH, Electrical Circle Diphu, without the instruction issued by the Addl. Chief Engineer (Com) Guwahati, to effect disconnection of the M/s. Vinay Cement Ltd. for non-payment of the revenue in arrear of an amount of Rs. 1.5 crore. The omission as above, on the part of the appellant having been construed to be deliberate and fraudulent for causing wrongful gain to M/s. Vinay Cement Ltd., it was treated to be a gross misconduct on his part for which he was placed under suspension by order dated 30.04.1993 and he was thereafter served with a memorandum of charge initiating a disciplinary proceeding against him under the Regulations. The reply submitted by the appellant-writ petitioner not being satisfactory, the Board pursued the proceedings in course of which it examined four witnesses. The appellant-writ petitioner was afforded all reasonable opportunities to defend himself in the proceeding and eventually the enquiry officer submitted his report on 20.05.1999 holding the charge to be proved. A second show cause notice was thereafter issued to the petitioner, furnishing therewith a copy of the inquiry officer's report to which the appellant-petitioner responded. The disciplinary authority not being convinced thereby, the proposed penalty of termination of service was imposed on him. According to the Board, though, a copy of letter dated 16.06.1992 had been handed over to the appellant-writ petitioner by Shri C.R. Medhi, he (petitioner) submitted a copy thereof, in his handwriting to the Superintending Engineer KANCH, Diphu, intentionally excluding the second paragraph thereof. On enquired by the Superintending Engineer KANCH, Diphu, Electrical Circle about the correctness of the hand written copy, the appellant made the following endorsement thereon: -

This has been collected from the Addl. Chief Engineer (Com) in toto
(Signature of) J. Barua, AE
15.11.92
KANCH Circle, Diphu.

9. The respondents have maintained that as the action of omitting the operative direction contained in the letter dated 16.06.1992, was fraudulent and dishonest, his services were terminated in the interest of the Board. The learned Single Judge noticing that the disciplinary proceeding had not been questioned on the ground of denial of procedural safeguards, held the view on the bas

is of the materials on record that the present was not a case of no evidence and considering the limited scope of scrutiny under Article 226 of the Constitution of India, declined to interfere. The appellant-writ petitioner's conduct was held to be prejudicial to the Board.

10. The only argument advanced by Mr. Mahanta is that the proved imputation could not in any view of the matter be construed to be a fraud or dishonesty to the Board's services and, therefore, the penalty imposed, is shockingly disproportionate requiring the interference of this Court. The learned Single Judge having left out of consideration the above aspect of the matter, he urged that in the interest of justice, the impugned judgment and order needs to be set aside.

11. Mr. Singha, in reply has urged that it being apparent from the recorded facts that the appellant-writ petitioner was guilty of a misconduct of committing fraud and dishonesty to the Board's services, the penalty imposed is proportionate to the proved charge and, therefore, this Court would not sit in appeal thereon.

12. We have carefully weighed the rival contentions. Having regard to the arguments outlined hereinabove, we would confine the analysis of the materials on record bearing only on the same. Admittedly, the copy of the letter dated 16.06.1992, produced by the appellant/writ petitioner before the Superintending Engineer, KANCH Electrical Circle, did not contain the following, though the same comprised the second paragraph of the original letter of the same date.

> You are further requested to serve disconnection notice as per this office letter No. ACE (COM)/T-d10/92/2, dt. 02.06.1992 and effect disconnection in the event the payment in delayed beyond the stipulated time.

13. It cannot be gainsaid that the above operative direction for disconnection of electric supply to M/s. Vinay Cement Ltd. being in arrears of Rs. 1.5 crores seeing from the view point of the Board was vital. Noticeably, the appellant-writ petitioner has been inconsistent with regard to the process of making the handwritten copy of the said letter. Whereas, in the disciplinary proceedings as noticed, he was categorical in asserting that he had copied the contents from the letter dated 16.06.1992, produced from the official records by the Executive Engineer C.R. Medhi, his plea in the writ petition, is that the same had been taken down by him as dictated by Shri Medhi. The omission on the part of the appellant-petitioner to take down the contents of the letter dated 16.06.1992 as a whole, is intriguing he being such a senior officer of the Board. Significantly, Shri C.R. Medhi examined in the disciplinary proceeding, has testified that a copy of the letter dated 16.06.1992 from the official records had in fact been handed over to the appellant-petitioner as instructed by the higher authority. The same stand is reiterated by the Board in its counter in the instant proceeding. This assumes importance in view of the petitioner's admission in the disciplinary proceeding that he had copied the contents of the letter dated 16.06.1992, and his insistence that the copy furnished to the Superintending Engineer KANCH Electrical Circle, was an exact copy thereof.

14. Having regard to the attendant facts and circumstances and the wavering stand of the appellant-petitioner in the teeth of the categorical assertion of the Board to have supplied to him a copy of the letter dated 16.06.1992, we cannot persuade ourselves to conclude that the view taken by the learned Single Judge pertaining to the charge of fraud and dishonesty is absurd and illogical. The petitioner has failed to offer a consistent and convincing explanation to the apparent dereliction of duties. Considering the wrongful advantage enjoyed by the defaulter consumer thereby, at the cost of the Board, the charge of fraud and dishonesty is not misplaced. Not only according to us, the appellant-petitioner had failed to discharge his duty with sincerity and devotion as was expected of him, his conduct in the background of the staggering arrears of revenue due to the Board and the obvious advantage availed by the consumer involved, cal

led for the disciplinary action as taken. The Board being satisfied on the basis of the materials available that the appellant-petitioner by his conduct has rendered himself unsuitable for retention of its services in exercise of our writ jurisdiction, we do not intend to interfere therewith. As it is, the prerogative of selecting a penalty in a disciplinary proceeding normally rests in the authority concerned and interference by the Court is called for only if the same is shockingly disproportionate to the proved charge. In the facts and circumstances of the case, we are unable to repudiate the decision of the Board on this count.

15. The Board has made an assessment of the recorded facts and has arrived at a conclusion, which cannot be impeached as irrational or preposterous. We therefore, do not find merit in the appeal, which is accordingly dismissed. No costs.